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NOTES.

"SOLE BENEFIT" IN DIRECTIONS FOR ACCUMULATIONS UNDER NEW YORK STATUTES.—Under New York statutes all directions for the accumulation of the rents and profits of land or the income of personal property are void unless such accumulation is directed to commence within the time limited for the suspension of the power of alienation or absolute ownership, is for the benefit of one or more minors then in being, and is to terminate at or before the expiration of their minority. 1 R. S. 726, §§ 37, 38; id. 773, § 3; see also Laws 1896, c. 547, § 51; Laws 1897, c. 417, § 4. A recent case, *Cochrane v. Alexandre* (1907) 107 N. Y. Supp. 587, has confirmed the rule laid down by *Pray v. Hegeman*, (1883) 92 N. Y. 508, that the accumulation directed must be for the sole benefit of the infant beneficiary, and that therefore a direction that the income only from the accumulated fund be paid to the infant after his majority and that at his death after majority the fund

shall go to another is void. See 7 COLUMBIA LAW REVIEW 403. The rule requires that the minor shall take the accumulations in enjoyment upon attaining his majority, *Pray v. Hegeman*, *supra*, 516, but its effect upon a direction to accumulate for a minor, A, and to pay over the accumulated fund to him upon majority, but if he die during minority, then to pay over that fund to another, B, has not as yet been definitely settled. The Court of Appeals has dealt directly with the question only in a solitary dictum, *Smith v. Parsons* (1895) 146 N. Y. 116, 120, although in *Wood v. Mitcham*, (1883) 92 N. Y. 375, where the question was not raised or noticed by the court, the result of the decision was to hold such a direction over valid. In the aforesaid dictum the Court said that there was no legal objection to such a direction over to either a minor or an adult, provided the accumulations had not vested in A as paid in. The question then arises as to whether accumulations must vest as they accrue in order that a direction to accumulate may be valid. It is settled that A must be entitled to the next eventual estate in the realty, *Manice v. Manice* (1871) 43 N. Y. 303; *Pray v. Hegeman*, *supra*; Revisers' Notes, 3 R. S. 578 (2nd Ed.); and see Laws 1896, c. 547, § 52, and that this estate must be vested in him in order that the accumulation may be said to be for his benefit. *Manice v. Manice*, *supra*, 379, 380. Ordinarily the deed or will vests the estate, and the interposition of the minority is not a condition precedent. *Manice v. Manice*, *supra*, 380. The same rules appear now to apply to the corpus of personalty and with equal reason. 7 COLUMBIA LAW REVIEW 73; *Everitt v. Everitt* (1864) 29 N. Y. 39; *Paterson v. Ellis* (1833) 11 Wend. 259; but see Laws 1897, c. 417, § 5, where the words "entitled to the expectant estate" are omitted. If, then, the expectant estate must vest in the minor in order that the accumulations may be said to be for his benefit, it would seem *a fortiori* that the accumulations should vest as they accrue. In *Manice v. Manice*, *supra*, 379, 380, it was laid down that accumulations must be for the sole benefit of the minor; that, therefore, the accumulations must vest; but that they could not vest if the expectant estate in the realty was contingent; and that, therefore, the estate in the realty must be vested. In this argument the court assumed as a premise that the accumulations must vest, and such seems to be the law. *Draper v. Palmer* (1889) 27 N. Y. St. Rep. 510; *Smith v. Parsons*, *supra*, 121; *Smith v. Campbell* (1894) 75 Hun 155, 161; *Willeys v. Titus* (1878) 14 Hun 554; *Gilman v. Healy* (1882) 1 Dem. 404, 408; and see *Matter of Lehman* (1896) 2 App. Div. 531; and Laws 1896, c. 547, § 52; Laws 1897, c. 417, § 5, which assume vesting. Revisers' Notes, 3 R. S. 578 (2nd Ed.).

According to the dictum then, in *Smith v. Parsons*, *supra*, a direction over to B would be invalid, but the lower courts, in several instances, have intimated that vested accumulations might be divested upon the death of A during his minority. *Willeys v. Titus*, *supra*; *Gillman v. Healy*, *supra*, 408; and see *Bolton v. Jacks* (1868) 6 Robt. 166, 230. In the case last cited the Court reasoned that by the act of God it was impossible to comply with the provisions of the statute by giving the accumulations to the minor at majority, and that therefore, if there were no provision in the will, the fund would have to revert back and the testator die intestate as to it; hence that there was no reason why the testator should not anticipate this result,

treat the fund as part of his original estate, and devise it over to whom he chose. But this, of course, assumes that the accumulations did not vest as they accrued. It has also been stated that a devise over of the corpus, if the minor dies before majority, carries with it the accumulations, *Gilman v. Healy*, *supra*, 408, but this is repudiated by *Draper v. Palmer*, *supra*. In *Smith v. Campbell*, *supra*, 158, 159; cf. *Smith v. Parsons*, *supra*, 120, it was stated that a gift over to B, an adult, would be void under the statute, but that a gift over to B, a minor, might not be. There should be no distinction between these two cases, for since A takes a vested interest in the accumulations, B, in either case, takes only a contingent interest, and the accumulation is not for his sole benefit. A distinction, however, must be made between the question whether a direction under the statute is good or bad, and the question whether the statute operates upon a given direction at all. The statute operates upon "all directions for the accumulation * * * for the benefit of one or more persons." Thus, if there is a direction to accumulate for A and pay the accumulated fund to him at his majority provided he is unmarried, the statute operates upon it although the gift is contingent, and the result is that the direction is void, for although the accumulation is for A's benefit, it is not for his sole benefit. See *Pray v. Hegeman*, *supra*, 514. So in the case of a direction over to B the accumulation is equally for his benefit, and the statute operates upon it, whether B is a minor or an adult, and makes the direction bad. It seems, therefore, that every direction over is void under the statute. See *Smith v. Parsons*, *supra*, and *Draper v. Palmer*, *supra*. Chaplin, Susp. Pow. Alien. § 263 *et seq.* But cf. Reeves, Real Prop. § 677, where a direction over is supported on the ground of the practical necessity of the case.

The remaining question then, is whether, by reason of the void direction over, the primary direction to accumulate for A is avoided. This depends upon the meaning of the words "sole benefit." If they mean the total possible legal benefit, it is evident that the primary direction would likewise be void, for the direction over involved a legal benefit to the contingent remainderman sufficient to make the statute operate upon it, thus subtracting from A's necessary total possible legal benefit. However, it would seem that the requirement of the words "sole benefit" and the apparent and reasonable meaning of the statute are satisfied if A has a vested interest both in the expectant estate and in the accumulations as they accrue, to become absolute in enjoyment in him upon his attaining his majority, *Manice v. Manice*, *supra*; *Pray v. Hegeman*, *supra*, and that the mere addition of a void condition subsequent should be insufficient to invalidate an otherwise valid primary direction. It is doubtful if any court would adopt the opposite construction. The clear object of the statute is to protect and benefit a living infant; the court likewise will strive to protect him, and hence to uphold the primary direction. Conceivably courts may continue to ignore the operation of the statute upon the direction over, *Willets v. Titus*, *supra*; *Bolton v. Jacks*, *supra*; *Gilman v. Healy*, *supra*; *Smith v. Campbell*, *supra*, on the ground that the object of the statute has been satisfied, or on the ground of the practical necessity of the case. However, if this be so, it is difficult to see how the statute could operate at all upon a primary direction giving a mere contingent interest to an infant, and yet the court in *Manice*

v. *Manice*, *supra*, expressly stated that such a direction would be invalid under the statute. See *Smith v. Parsons*, *supra*, 120. Unless both directions are held valid, it is submitted that the practical results of the view advanced here are the better, for if the other view be taken, i. e. that "sole benefit" means total possible legal benefit, both directions are invalidated, thus defeating the apparent object of the statute, the policy of the court as to infants, and the intent of the testator, for the infant will take the accumulations as they accrue, since he is the person presumptively entitled to the next eventual estate. 38 N. Y. Law Jour. No. 132; 7 COLUMBIA LAW REVIEW 403.

LIBERTY OF CONTRACT AND THE COMMERCE CLAUSE.—Section 10 of the Erdmann Act, passed in 1898 in the hope of preventing railway strikes, and providing for voluntary arbitration of labor disputes between interstate carriers and their employees, made it a misdemeanor for an interstate carrier or its agent to dismiss an employee because of his membership in a labor union. This section has recently been held unconstitutional by the Supreme Court, two Justices dissenting. *Adair v. United States* (Jan. 27, 1908). Two grounds were given for the decision: (1) The Act deprived the plaintiff, an agent of a railway company, of the liberty guaranteed him by Amendment V, U. S. Const.; (2) The subject of the section bore no such relation to interstate commerce as to warrant Congressional regulation. The second ground indicates a slight narrowing of the court's interpretation of the commerce clause. Congress has power over the persons engaged in interstate commerce in so far as its action constitutes a regulation of that commerce; *Cooley v. Board of Wardens* (U. S. 1851) 12 How. 299, 316; 7 COLUMBIA LAW REVIEW 116; although it may not interfere with their general business affairs. *Employers' Liability Act Cases* (1908) 207 U. S. 463, 502; *Interstate Commerce Commission v. Harriman* (1908) 157 Fed. 432. But, although Congress possesses a large discretion as to the means of executing its power, *Lottery Case* (1902) 188 U. S. 321, 355, the professed regulation must always bear a substantial relation to interstate commerce. *United States v. E. C. Knight Co.* (1894) 156 U. S. 1; *Hopkins v. United States* (1898) 171 U. S. 578; 7 COLUMBIA LAW REVIEW 116. In the principal case the connection between interstate commerce and the employee's membership in a labor union seems distinctly more remote than was the case even in the *Employers' Liability Act* decision. Had the regulation tended to increase the efficiency of the service, as by prescribing actual qualifications for employees, it would probably have been sustained; *Smith v. Alabama* (1888) 124 U. S. 465, 479; *Nashville etc. Ry. v. Alabama* (1888) 128 U. S. 96, 99; and the minority argued that the purpose of the Act indicated its beneficial nature beyond the reach of judicial determination. But a court may not decline to investigate the real character of a statute because of its nominal purpose and the confidence of its framers. *Lochner v. New York* (1904) 198 U. S. 45, 64. And here it was forced to conclude that the Act was not in fact a regulation of interstate commerce.

The other ground for the decision involves an interpretation of two apparently conflicting clauses in the Constitution. Although similar statutes passed by State legislatures have rarely been sustained, *People v. Marcus*